

Virginia Department of Agriculture and Consumer Services

Division of Consumer Protection - Office of Weights and Measures

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TECHNICAL BULLETIN

Bulletin number: 2011-02

Subject: Advertisement signs and posted signs with taxes included or excluded and the total price displayed at the pump

Issue date: July 1, 2011

Expiration date: In effect until rescinded or amended

Purpose:

The purpose of this bulletin is to provide guidance to retailers who wish to advertise or post signs with or without taxes and how they should be displayed at the pump at the time of delivery to a customer.

Background:

The Office of Weights and Measures (OWM) has noticed that some retailers have been advertising and posting signs then charging more or giving rebates back after the time of delivery depending upon whether or not sales tax was included. This practice can be confusing and even deceptive to consumers.

In part Virginia Code § 3.2-5631 states that the total price of petroleum products so advertised or posted shall not differ from the price as shown on the pump or in any computed price charged the customer.

Section 3.2-5606* of the Code of Virginia allows the Commissioner of the Virginia Department of Agriculture and Consumer Services to adopt the advice and recommendations of the National Institute of Standards and Technology (NIST) for purposes of inspecting weights and measures devices. Such advice and recommendations are prescribed in handbooks published by NIST, such as Handbook 44, "*Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices*." NIST's current guidance on multi-tier pricing focuses on cash versus credit purchases, but it does not adequately address a variety of other pricing practices that have gained popularity recently, such as club cards, frequent shopper or loyalty programs, and other promotional specials. Until such time as NIST Handbook 44 does address this, the following interim guidance is provided.

Interim Guidance:

1. Advertising Signage:

Road sign advertising must state the unit price, e.g. price per gallon, for at least the lowest grade available. If a discount for the cash price or a specific credit card discount is offered, then the sign must prominently display, beside the discounted unit price, the word "**CASH**" or the name of the discount card or the credit card. The lettering of the word "**CASH**" or the discount card or the credit card shall be sufficiently large as to be plain and conspicuous from a reasonable distance.

2. Dispenser requirements:

Unless a specific contractual agreement exists between a customer and the retailer when offering discounts for cash, a specific credit card, or a discount card, the dispenser must be able to display the correct unit price before time of delivery. For cash sales, the retailer can adjust the unit price from a remote console so that the cash price is displayed prior to customer's initiation of the transaction at the dispenser. As currently required by law, all motor fuel pumps dispensing product for retail sales must display the total price to be paid for the amount of fuel purchased. If a receipt is printed at the dispenser or inside by the cashier, the receipt must show the price per gallon, gallons dispensed, total sale price, pump number, grade of fuel purchased and the address of the business location where the purchase was made.

3. Contractual Agreements, Discounts and Rebates:

NIST Handbook 44 specifies the requirements for the display of unit price, money-value computations, selection of unit price, and the display of quantity and total price. Handbook 44 defines a contract sale as a sale where a pre-existing written agreement exists prior to a sale, in which both buyer and seller have accepted the pricing conditions governing the sale. Our interpretation of this provision is that motor fuel retailers can legally provide a reduced fuel price to an established group of clients at a price that is lower than that which is displayed on the dispenser or on the advertising signage for retail sales. Our position is that contract sales may include the following:

- A) Discounts or rebates offered by credit card companies, whether or not the face of the card indicates an affiliation with the specific motor fuel retailer. The discount or rebate offered may be limited in duration as part of promotional incentive to attract new clients or may apply continually.
- B) Discounts or rebates offered to the customer at the retail location in which the use of a bar-coded card, a card with a magnetic stripe issued by the retailer, or other similar mechanism is scanned prior to the customer tendering payment. Following scanning of

the card, the system must automatically compute the final purchase price of the motor fuel prior to the customer tendering payment.

We are available to review other types of contractual sales of motor fuels on a case-by-case basis. We will consider those contractual sales that are deemed to be in compliance with the Virginia Weights and Measures Law and NIST Handbook 44 as acceptable pricing practices. However, retailers may not hand-calculate discount prices or rebate amounts and may not redeem cents-off coupons to reduce the total sale price after the product has been delivered.

4. Cents off Pricing:

Retailers who desire to have cents-off pricing on any given day of the week (e.g. 4 cents off gasoline on Tuesdays) may do so provided that the dispensers are set to display the reduced price on the designated day for the applicable motor fuel products. For the purposes of this technical bulleting, a day is a 24-hour period that begins at 12:01 a.m.

If you have questions regarding this bulletin, contact Mr. Dale Saunders, Weights and Measures Program Manager, Office of Weights and Measures, at (804) 786-1274 or via e-mail at dale.saunders@vdacs.virginia.gov.
